THE
MADRAS LAW JOURNAL

I] MARCH [1944

SIR ALLADI KRISHNASWAMI AIYAR'S RESIGNATION.

Sir Alladi Krishnaswami Aiyar's tenure of office as Advocate-General is remarkable in more than one respect. He has been the first law officer of the Crown in Madras for the longest period in the history of that office, certainly in this Presidency and probably in the whole of India. Appointed by Letters Patent issued under the Royal Sign Manual, he continued in office on the coming into force of the Government of India Act, 1935. He has thus been the legal adviser successively to the dyarchical Government that functioned under the Act of 1919, to the interim ministry that was constituted in April, 1937, to the responsible Government set up in July of that year and to the "adviser regime" which subsequently took charge of the administration of the province. This in itself is a wonderful tribute to the unshaken confidence reposed in him and his profound legal acumen and sound knowledge of law by the successive administrations.

When he was appointed Advocate-General in January, 1929, Sir Alladi had no doubt been "caught young"—he was but forty-five then—but he was already at the top of the profession. So great was his reputation as a lawyer of erudition that he was made a member of the expert committee appointed by the Government of India in connection with the Indian Sale of Goods Bill in 1929, and in the next year of the expert committee constituted for drawing up the Partnership Bill.

As Advocate-General, Sir Alladi has represented the Government of Madras in a number of inter-statal arbitrations involving questions of water rights, boundary disputes, etc. In the Cauvery water dispute between Madras and Mysore, he appeared before Mr. Justice Page (then of the Calcutta High Court) being opposed by Sir Chimanlal Setalvad who had been briefed on behalf of Mysore. In the arbitration proceedings concerning the Cochin Harbour dispute, before Mr. Justice Broomfield, he was opposed by Mr. T. R. Venkatarama Sastriar who presented the case for Cochin. In the Periyar water dispute arbitration both in the first instance, before Sir David Devadoss and Mr. V. S. Subrahmania Aiyar, and later before Sir Nalini Ranjan Chaterjee, Sir Alladi appeared against Sir C. P. Ramaswami Aiyar who argued the case on behalf of the Travancore Government.

The establishment of the Federal Court provided Sir Alladi with an ampler theatre in which to pit himself against the best Indian legal talents and exhibit his mastery of the law and arrest the attention of a wider public. Several cases involving intricate questions of constitutional law have been argued by him. Among others, mention may be made to the References concerning the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, and the Hindu Women's Rights to Property Act, 1937, and to the cases where

the validity of Acts like the Madras Prohibition Act, 1937, the Madras Agriculturist Debtors Relief Act, 1938, the Madras General Sales Tax Act, 1939, and the Ordinances promulgated by the Government of India fell to be considered. Sir Alladi did not go "special" at any time but he was equally at home in every branch of the law, whether it was a recondite question of property law or a knotty point of constitutional law or a complicated question of water rights or an abstruse question of Hindu law or Canon law that he had to deal with. He had a vast knowledge of case law, English and Indian, upon which he was able to draw often and with telling effect. His approach to the study of law was in the spirit of an artist and his knowledge was broad-based and accurate.

The time to appraise Sir Alladi's merits as an advocate is not yet, as he continues in active practice. It may however be mentioned that his forensic successes have been phenomenal. Gifted with an exceptionally quick and alert power of comprehension, intellectual eminence, ruthless logic and profound learning he has always been a formidable opponent to tackle in forensic combats. In his youth he had toiled hard and wisely and when he rose to the top of the bar his all round equipment enabled him to retain his position easily. The primacy which the Madras bar enjoys in the intellectual sphere is due in a considerable measure to persons like him. In Sir Alladi's retirement the Government of Madras will be losing the services of one of its ablest Advocates-General in recent times. What is a loss to Government will however be a gain to the public and it will be eminently fitting if at the time of fashioning the constitution of India after the war the services of Sir Alladi with his mastery of constitutional law are available and taken advantage of.

TWO NOTABLE PRONOUNCEMENTS.

Attention may be invited to two noteworthy pronouncements of Scott, L.J., in two recent cases before the Court of Appeal concerning the rule of law and freedom for the citizen. In *Garbett* v. *Hazell, Watson & Viney Ltd.*[1], the learned Lord Justice observed:

"In a democrary like ours the rule of law is the most important principle in public life. That any man should be able to come to the Court and be sure of getting justice is the absolute condition of all democratic life. It is the condition of our freedom—the freedom for which we are now fighting".

It is the maintenance of the rule of law and the independence of the judiciary standing as a bulwark against any encroachments by any one on the rights and freedom of the citizens of the land that have ensured respect and admiration for the British institutions all over the world. The observation referred to was made in action for libel. It is well settled that an action will lie for pictorial libel. The position was taken further in the above case where it was held that such an action will lie even where the sting of the matter arises only by reason of the collocation of the pictures and the letter press, that is to say, by the juxtaposition of the photographs in the magazine and the reading of the words underneath them together.

The other statement of Scott, L.J., occurs in *Lyon* v. *Daily Telegraph Ltd.*[2], which decides a new point in the law about fair comment. The Lord Justice remarked that the right of fair comment "is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law upon which we depend for our personal freedom, that the Courts should preserve the right of fair comment undiminished and unimpaired". It is familiar knowledge that the correspondence column in the press

1. (1943) 2 All.E.R. 359 (C.A.). 2. (1943) 2 All.E.R. 316 (C.A.).

is constantly resorted to as a vehicle of criticism on matters of public interest and importance. Some of the letters so published might give the name and address of the writer while in other cases a *nom de plume* might be employed. The question was argued whether in all these cases there was a duty on the part of the newspaper to verify the correctness of the name and address of the writer before publishing the letter if in any action for libel later on in regard to any such letter the plea of fair comment is raised. In the case in question the letter contained a criticism of a radio entertainment. It was shown that the signatory was a fictitious person and the contention was that the failure of the newspaper to verify the signature and address destroyed the plea of fair comment in an action for libel. In rejecting the contention, it was held that the argument, if sound, would place "upon newspapers a heavy burden—a burden so deterrent in practice as very much to reduce the valuable contribution to public discussion which results from a free publication of correspondence in the press". The Court of Appeal laid down that provided the letter did not exceed the bounds of fair comment on a matter of public interest, the fact that the address given in the letter is false and there is no one of the name with which the letter is signed will not defeat the plea of fair comment on the part of the newspaper.

SUMMARY OF ENGLISH CASES.

LEICESTER PERMANENT BUILDING SOCIETY *v.* BUTT, (1943) 2 All.E.R. 523 (Ch.D.).

Mortgage—Receiver appointed by mortgagee—Duty to account to mortgagee though his position only that of agent of mortgagor—Statutory duty and Law of Property Act (1925), *Section* 109.

A person who is interested in the performance of a statutory duty may maintain an action against a person made liable by the statute to perform the duty for breach of it. A receiver appointed by a mortgagee, though he is the agent of the mortgagor, can be called to account by the mortgagee by whom he had been appointed. There is a statutory duty imposed on the receiver (by section 109 of the Law of Property Act (1925), in the performance of which the mortgagee is interested.

RE I. G. FARBENINDUSTRIE, A. G. AGREEMENT, (1943) 2 All.E.R. 525 (C.A.).

Practice—Adding as party—Having mere commercial interest in the result of proceedings—Not a ground for adding as party—R.S.C., Order 16, *Rule* 11*—Not applicable.*

The fact that a person has a commercial interest in the litigation and nothing more not merely gives him no right to demand to be added as a party to proceedings by the result of which that commercial interest may be affected, but the Court has no jurisdiction to add him any more than it has jurisdiction to add any man in the street. It is the practice of the Court, and the Court has power in proper cases, to add at his own request a party who claims to have a legal interest in the subject-matter of the suit—for instance creditors, debenture-holders and beneficiaries and persons of that character who can be added as defendants in administration proceedings. The fact that it was desirable that the Court should have before it somebody to argue a point did not give the judge jurisdiction to call in somebody to argue it for him as a sort of *amicus curiae* and add as a party to the action somebody who has no legal interest in the result of it.

There is nothing in R.S.C., Order 16, rule 11, which entitled the Court to add for its own convenience a party having a mere commercial interest only in the subject-matter of the suit.

CLARKE *v.* CLARKE, (1943) 2 All.E.R. 540 (P.D.).

Divorce—Nullity of marriage on the ground of absence of consummation due to physical reasons—Decree for—If can be granted when there is a child aged 10 *years— Presumption and onus—Fecundation* ab extra*—Effect.*

A husband who is sued for judicial separation can say that notwithstanding that after four years of married life his wife has borne a child of which he is admittedly the father and notwithstanding that the parties thereafter cohabited for ten years—the marriage

has never in fact been consummated. In cases of this kind there is always a presumption that the marriage has been consummated and the presumption is strong where the wife has borne the husband a child. The onus of satisfying the Court that the marriage has not been consummated lies heavily upon the husband.

It was found on a consideration of the facts and the medical evidence that the marriage had never been consummated and the birth of the child was due to fecundation *ab extra* and a decree of nullity was granted.

AYR COLLIERIES LTD. *v.* LLOYD GEORGE, (1943) 2 All.E.R. 546 (C.A.).

Defence Regulations, Reg. 55 (4)—*Orders under delegation of authority to control and give directions for carrying on an undertaking*—Bona fide *of decision of Minister—Not open to question in Courts.*

An order was made taking control of a colliery by the Minister of Fuel and Power under the Defence (General) Regulations, Reg. 55 (4) the relevant paragraph of which was as follows:—"If it appears to a competent authority that in the interests of public safety, the defence of the realm, or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, it is necessary to take control on behalf of his Majesty of the whole or any part of an existing undertaking, and that for the purpose of exercising such control, it is expedient that the undertaking or part should be carried on in pursuance of an order made under this paragraph, the competent authority may by order authorise any person (hereinafter referred to as an "authorised controller") to exercise, with respect to the undertaking or any part thereof specified in the order such functions of control on behalf of His Majesty as may be provided by the order . . ." Then it goes on to specify how the authorised controller is to exercise his functions and that the undertaking is to be carried on in accordance with his directions.

The appellants contended that there were no adequate grounds upon which the Minister could find, as he said he found, namely that it appeared to him that it was necessary to take control.

Held: The particular Ministry being the competent authority in whose hands Parliament has placed the particular power to decide whether or not it was necessary to take control of a particular undertaking, those matters are not within the competence of the Courts. It is the competent authority that is selected by Parliament that should come to the decision, and, if that decision is come to in good faith, the Civil Court has no power to interfere provided of course that the action is one which is within the four corners of the authority delegated to the Minister. The Court cannot investigate the adequacy of the minister's reasons for the order. The Court cannot investigate the rapidity or the lack of investigation, if it existed, with which he acted. The only constitutional safeguad is the supervision of ministers exercised by Parliament.

LOMAS v. JONES AND SON, (1943) 2 All.E.R. 548 (C.A.).

Tort—Negligence—Master's liability for servant's negligence—Common carrier—Consignee injured while assisting carrier's servant while unloading—Liability.

The appellants were common carriers and the respondent was a farmer who engaged the appellants to carry for him two cows from his farm to another farm and to bring back a heifer. For this purpose the appellant's driver was using a motor lorry. At the time of the accident the lorry was standing in the respondent's farm yard after the heifer had been taken from it. The respondent assisted the driver to close the doors of the lorry. The driver failed to bolt the first door securely and when they were proceeding to fasten the second door, the first door fell upon the respondent and severely injured him. In an action for damages against the appellants,

Held: That the negligence of the appellant's lorry driver in not fastening the bolts of the first door securely was the effective cause of the accident and that the appellants were therefore liable. Whether the driver had implied or apparent authority either to seek assistance or to accept it if offered is irrelevant. The duty of the appellant to the respondent included the duty to see that the van while in the respondent's premises was not put or left in such a condition as to be dangerous to the respondent lawfully present on his own premises.